

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

June 7, 2011

---

No. 09-41152  
Summary Calendar

---

Lyle W. Cayce  
Clerk

ROBERT W. ANDERSON,

Plaintiff-Appellant

v.

JOE BUTLER; JOHNNY ABRAHAM; PAUL JUNG; DIANNA ETON; PETER HEINE; JAMES W. MOSSBARGER; ALPHONSO L. JAMES, JR.; CHARLES H. JAMES; MICHAEL FINKBEINER; ANITHA CHERIAN; NURSE BOONE; ROBERT G. BEARD; WILLIAM MCWHORTER; GUY SMITH; VIJAYA K. KARTRAGADDA; JAMES L. JONES,

Defendants-Appellees

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 3:06-CV-784

---

Before JOLLY, GARZA, and STEWART, Circuit Judges.

PER CURIAM:\*

Robert W. Anderson, Texas prisoner # 1289121, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint arising from an incident on October 5, 2006, during which he was injured when a ceiling tile in the prison's gymnasium fell on his head. Anderson argues that the district court erred in

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 09-41152

dismissing his claims, which he contends are properly exhausted and meritorious.

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). The notice of appeal in a civil case must be filed within 30 days of entry of judgment. FED. R. APP. P. 4(a)(1) (2008). In this § 1983 action, the district court entered final judgment dismissing the complaint on October 22, 2008. Therefore, the final day for filing a timely notice of appeal was Friday, November 21, 2008. *See* FED. R. APP. P. 26(a) (2008). Anderson's pro se notice of appeal is dated November 7, 2009, and was filed on November 12, 2009. Because the notice of appeal is dated November 7, 2009, it could not have been deposited in the prison's mail system within the prescribed time. *See* FED. R. APP. P. 4(c) (2008) (stating that a prisoner's pro se notice of appeal is deemed timely filed if deposited in the prison's internal mail system on or before the last day for filing). The time limitation for filing a notice of appeal in a civil case is jurisdictional. *Bowles v. Russell*, 551 U.S. 205, 212-13 (2007). The lack of a timely notice mandates dismissal of the appeal. *Robbins v. Maggio*, 750 F.2d 405, 408 (5th Cir. 1985).